

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and

THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION No: 22242 of 2004

Between:

G. Sudhakar, S/o. Chandramouli,
R/o. Vijayawada, Krishna District.

..... PETITIONER

AND

The Deputy Transport Commissioner & Secretary, Regional Transport Authority,
Krishna District at Vijayawada.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or direction preferably one in the nature of Writ of Certiorari, calling for the records relating to the impugned Proceedings of the respondent vide R.No.43422/A3/2002, dated 08-11-2004 and quash the same as illegal, arbitrary and contrary to law and consequently direct the respondent to

consider the request of the petitioner for issuance of No Objection Certificate in respect of his Bus-A.P.13/T.6868 forthwith.

Counsel for the Petitioner: MR.E.MARUTHI RAJA

Counsel for the Respondent: GP FOR TRANSPORT

The Court made the following:

ORAL ORDER:- (Per the Hon'ble Sri Justice M.H.S. Ansari)

Heard learned counsel for the respective parties.

2. Even at this stage, respondent has filed a counter-affidavit. We are of the view that instead of keeping the Writ Petition pending on the file of this Court, it needs to be disposed of with certain directions.

3. Pursuant to the orders passed on a Writ Petition filed by the petitioner herein being W.P.No.14908 of 2004, the order demanding tax, and difference in tax and also levying penalty was reviewed and fresh orders dated 8.11.2004 were passed by the learned Deputy Transport Commissioner. This is the order that is impugned in the instant Writ Petition. A demand of Rs.90,000/- towards tax has been upheld in the impugned order on the ground that the vehicle was used as stage carriage during the grace period without payment of tax, which was paid only on 23.7.2003 almost one year after the expiry of the due date. Penalty was levied under Section 6 of the A.P. Motor Vehicles Taxation Act, 1963 being twice the amount of tax.

4. Petitioner has a claim for refund of tax for the period the vehicle was under stoppage. The grievance of the petitioner is that the said claim has not been adjudicated and from the counter-affidavit filed on behalf of the respondent, the stand taken is that the claim for refund is a separate issue and the said claim will be adjudicated separately. The contention is that pending of the claim would not vitiate the impugned orders passed on 8.11.2004. There is merit in the said contention. But at the same time the claim for refund cannot be kept pending indefinitely.

5. Learned counsel for the respondent has submitted that insofar as the challenge to the penalty is concerned, petitioner has an efficacious alternative remedy of appeal under Rule 15 of the A.P. Motor Vehicles Taxation Rules. As the petitioner has an efficacious alternative remedy of statutory appeal with respect to levy of penalty, we are of the view, that the petitioner be relegated to availing of the statutory remedy.

6. It is not in dispute that a sum of Rs.1,53,000/- has been paid and the balance claimed by the respondent is Rs.1,17,000/- towards tax and penalty excluding the claim for refund, which is yet to be adjudicated. A prayer is made on behalf of the petitioner that no coercive steps should be taken by the respondent for recovery of the balance, as sufficient amounts have been paid already on account of tax and penalty. The prayer, in the circumstances, seems reasonable to us.

7. In such view of the matters, instant Writ Petition is being disposed of with the directions as under:

1. *If the petitioner prefers an appeal before the Commissioner in terms of Rule 15 of the Taxation Rules with respect to the penalty levied by the impugned orders within two weeks from date, the same shall be taken on record and disposed of in accordance with law, within a period of three weeks therefrom.*

2. *Respondent – Deputy Commissioner shall consider the*

application of the petitioner filed for refund and dispose of the same in accordance with law within a period of two weeks from the date of communication of a copy of this order.

3. *Pending disposal of the appeal before the Commissioner with respect to penalty, it is directed that no coercive steps shall be taken for recovery of the same until the appeal is finally disposed of by the learned Commissioner. Thereafter, it shall be open to the respondent – department to effect recovery in accordance with law.*

8. Writ Petition is accordingly disposed of in terms as above. However, in the facts and circumstances of this case, there shall be no order as to costs.

(M.H.S. ANSARI, J.)

(T.CH. SURYA RAO, J.)

Date: 20.12.2004

NOTE:-

Issue C.C. in (3) days,
expeditiously and on priority basis.

B/o.

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To

1. The Deputy Transport Commissioner & Secretary, Regional Transport Authority, Krishna District at Vijayawada.
2. 2 CCs to the G.P. for Transport, High Court of A.P., Hyderabad (OUT).
3. 2 CD copies.